

ORIGINAL

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Exhibits 1 - 22

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NO. 04-11836-RCL

TRANS-SPEC TRUCK SERVICE, INC.,	*
d/b/a TRUCK SERVICE,	*
Plaintiff	*
	*
	*
VS.	*
	*
	*
CATERPILLAR, INC.,	*
Defendant	*

DEPOSITION of SAM S. PAPPAS, a witness called by and on behalf of the Defendant, pursuant to the provisions of the Federal Rules of Civil Procedure, before Heather S. Cruz, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Campbell, Campbell, Edwards & Conroy, One Constitution Plaza, Boston, Massachusetts, on Tuesday, September 13, 2005, commencing at 10:45 a.m.

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1 Eskow Road property approximate the mortgage payment
2 that DLH Trust makes on that property?

3 A The mortgage payment that DLH pays is much more than
4 the \$48,000.

5 Q But you can't tell me how much more?

6 A I don't remember exactly how much more.

7 Q Who holds the mortgage?

8 A I don't remember the name. I don't remember.

9 MR. GRUNERT: Mark these as 9, 10 and 11,
10 please.

11 (Documents marked as Exhibits No. 9 through 11.)

12 Q Sir, what are Exhibits 9, 10 and 11?

13 A Statement of assets, liabilities, and stockholder
14 equity on the income tax basis, as well as a statement
15 of revenue and expenses.

16 Q Are those documents that you prepared?

17 A Yes.

18 Q And do they relate to TS Truck Service, Inc?

19 A Yes.

20 Q And Exhibit 9 is for year-end 2001; 10 is for year-end
21 2002; and 11 is for year-end 2004, correct?

22 A Correct.

23 Q Did you prepare a similar document at year-end 2003 for
24 TS Truck Service?

1 A No, I did not.

2 Q Why not?

3 A There was no need.

4 Q You mean you weren't asked to do it?

5 A That's correct.

6 Q Did you prepare documents of this type for TS Truck
7 Service before year-end 2001?

8 A As a comparative, no.

9 Q So in the year 2000 or 1999 or 1998 you did not prepare
10 any financial statements of this type for TS Truck
11 Service?

12 A That's correct.

13 Q And again is that because you were not asked to do so?

14 A That's correct.

15 MR. GRUNERT: Mark these as 12, 13, 14,
16 please.

17 (Documents marked as Exhibits No. 12 through 15.)

18 Q Sir, is Exhibit 12 the 2004 tax return that you
19 prepared for TS Truck Service, Inc?

20 A Yes, it is.

21 Q And is Exhibit 13 the 2003 tax return that you prepared
22 for TS Truck Service?

23 A Yes, it is.

24 Q And is Exhibit 14 the 2002 tax return you prepared for

1 TS Truck Service?

2 A Yes.

3 Q And is Exhibit 15 the 2001 tax return that you prepared
4 for TS Truck Service?

5 A Yes.

6 Q And you supplied copies of those to the management of
7 TS Truck Service?

8 A Definitely. Yes.

9 Q Donna Howard?

10 A Correct.

11 Q By the way, I think I know this from the tax returns.

12 But both TS Truck Service and Trans-Spec Truck Service
13 are so-called C corporations, correct?

14 A They are C corps.

15 Q They're not sub-chapter S corporations?

16 A They are not.

17 Q And TS Truck Service is wholly owned by Donna Howard,
18 is that correct?

19 A 100 percent of the stock is held by Donna Howard.

20 Q And Trans-Spec Truck Service is 100 percent owned by
21 Joseph Howard?

22 A Correct.

23 Q And TS Truck Service was initially capitalized with
24 only \$100 investment, correct?

1 A To the best of my knowledge, yes.

2 Q And Trans-Spec was originally capitalized with \$1,000
3 investment, correct?

4 A I believe so. I wasn't the original incorporator, if
5 you will. So based on that information, yes.

6 Q The information you were supplied and put into your
7 financial statement was \$100 capitalization for TS
8 Truck Service and \$1,000 capitalization for Trans-Spec,
9 correct?

10 A Correct.

11 MR. GRUNERT: Why don't we take a short
12 break.

13 (Off the record.)

14 (Break was taken.)

15 Q Do you know, sir, whether in the year 2000 Trans-Spec
16 had a positive or negative net income?

17 Let me ask the question. Do you know whether
18 in the year 2000 Trans-Spec had a positive net income?

19 A I don't believe they did, but I don't recall.

20 Q I'm looking --

21 A Oh, I can tell you. They had a \$9,700 loss.

22 MS. REIMER: TS or Trans-Spec?

23 THE WITNESS: He said TS, right?

24 MR. GRUNERT: I said Trans-Spec.

1 THE WITNESS: I thought we were on TS.

2 MR. GRUNERT: Well, we finished up marking
3 some TS documents, but I just wanted to get the
4 documents marked.

5 THE WITNESS: Okay.

6 Q Take a look at Exhibit 8, which is Trans-Spec Truck
7 Service's 2001 tax return. There's a net operating
8 loss worksheet that is maybe five pages from the back
9 of that tax return. And I think it indicates an
10 \$11,301 loss for the year 2000. Am I reading that page
11 correctly?

12 A I believe you are. Let me solidify that for you, if I
13 may. That is correct. For tax purposes there was an
14 \$11,301 loss.

15 Q And is that also reflected in Exhibit 1 in which income
16 before provision for income taxes is reported as
17 negative 20,447?

18 A Correct. 20,447.

19 Q Do you know whether in 1999 or 1998 Trans-Spec had a
20 positive net income?

21 A I do not remember.

22 Q And do you have any documents back at your office that
23 would tell you that information?

24 A I don't believe so. Because as I said, as I stated

1 earlier, we looked high and low to try to find them and
2 we were unsuccessful in finding the '98 and the '99.

3 Q That's fine. So is it fair to say that at least since
4 the year 2000, Trans-Spec has never had a positive net
5 income?

6 A Since year?

7 Q Since the year 2000.

8 A Since year 2000. That is a fair statement to make.

9 Q And you don't know whether it had a positive net income
10 in the years immediately before the year 2000?

11 A In 1998 -- in '98 and 1999, if they did, it would have
12 been a very, very small profit. Extremely, extremely
13 small. Because didn't I do some research and I
14 found -- I remember doing something. I think it was I
15 had found something for '98 and '99. Trying to think
16 and I don't recall.

17 Q All right.

18 A But I think I had done something. I don't remember
19 what it was.

20 Q For purposes of today, sir, you just don't know?

21 A Yup.

22 Q For '98 and '99?

23 A Right.

24 Q Except that you're confident that if Trans-Spec had a

1 positive net income for either of those years, it was a
2 very small positive net income?

3 A Correct.

4 Q Do you know whether TS Truck Service had a positive net
5 income in the year 2000? And I think Exhibit 9 may
6 answer the question for us.

7 A 2000 it had a loss of \$9,200, approximately.

8 Q And take a look at Exhibit 12, which may be four or
9 five pages in. Has an NOL and contribution carry-over
10 worksheet and I want to see if I'm understanding this
11 page correctly.

12 Does this page indicate that for the year
13 1999, TS had a loss?

14 A Correct.

15 Q And it doesn't indicate anything about 1998, correct?

16 A That's correct.

17 Q Do you know whether TS had a positive net income in
18 1998?

19 A I don't remember. But if it did, it would have been
20 again a very, very small profit.

21 Q And in 1997 it had a small loss as well?

22 A \$45, right.

23 Q Looking still at that page of Exhibit 12. We see that
24 in the year 2002, TS Truck Service had a very large

1 loss, 223 some odd thousand dollars, correct?

2 A Correct.

3 Q And the next year it had a \$218,000 some odd profit,
4 correct?

5 A Correct.

6 Q And it was able to use the losses it had sustained in
7 prior years to offset that profit so it paid no taxes
8 in that year, correct?

9 A That's correct.

10 Q Since you have been doing TS Truck Service's tax
11 returns, do you recall any year in which it paid a
12 federal income tax?

13 A I do not recall, no.

14 Q Since you've been doing Trans-Spec's tax returns, do
15 you recall any year in which Trans-Spec paid a federal
16 income tax?

17 A That I do.

18 Q When do you recall it paying a federal income tax?

19 A What years, I don't know, but I know it was prior to
20 2000.

21 Q I want to return to Exhibit 4, which is Trans-Spec's
22 year-end 2004 financial statement, because I simply
23 want to ask you some more questions about items that
24 are in there.

1 declined by about \$160,000 over the previous year.

2 A Uh-huh.

3 Q If you look at Exhibit 6, on the same page you'll see
4 where I'm getting what I think is a decline. What is
5 the explanation for that decline?

6 A I don't know. I simply don't have one. I don't know.

7 Q Do you know whether before 2004 Trans-Spec was paying
8 for health insurance for TS Truck Service's employees?

9 A I don't think they were.

10 Q So you don't know why Trans-Spec's insurance payments,
11 insurance premiums for 2004 were less than half of what
12 they were in 2003?

13 A No. No, I do not. I don't know.

14 Q When I was looking at the tax returns for Trans-Spec
15 and also financial statements, it appeared to me that
16 in the year 2002, Trans-Spec's gross receipts declined
17 significantly from what they had been in 2001, as did
18 its cost of goods sold, as did its gross profit, as did
19 its total income.

20 Do you have an understanding of what the
21 reason for that decline was?

22 A I don't.

23 Q First of all, do you agree that in the year 2002
24 Trans-Spec's gross receipts were somewhere between 6

1 and \$700,000 less than in 2001?

2 A Yes.

3 Q And gross receipts means basically that what it's being
4 paid in the ordinary course of running its business,
5 right?

6 A Uh-huh.

7 Q And it also, do you agree, that its profit was about --
8 gross profit was about \$280,000 less than in 2001?

9 A Yes.

10 Q And its total income was about quarter of a million
11 dollars less than in 2001, right?

12 A It's -- sorry, it's --

13 Q It's total income as listed on its tax returns was
14 about quarter million dollars less than in 2001?

15 A Uh-huh.

16 Q Yes?

17 A Yes.

18 Q All right. But as you sit here today, you don't have
19 any knowledge of why there were those declines in the
20 revenue side of Trans-Spec's business that year?

21 A No.

22 Q It appears to me from the tax returns that between 2002
23 and -- between 2002 and 2003, there was an increase of
24 a little more than half a million dollars in

1 Trans-Spec's gross receipts. Does that -- is that
2 true?

3 A About right. Yeah. Uh-huh.

4 Q And there was an increase of about 1.8 million dollars
5 in its gross profit, correct, between 2002 and 2003?

6 A That's about right.

7 Q And an increase of about a million eight hundred
8 thousand dollars in its total income?

9 A Correct.

10 Q Do you have an understanding for why Trans-Spec's
11 revenues, why the revenue side of Trans-Spec's business
12 experienced that increase between 2002, year-end 2002
13 and year-end 2003?

14 A No, I don't.

15 Q It appears from the tax returns that between year-end
16 2003 and year-end 2004 Trans-Spec then had a decline in
17 gross receipts of maybe \$340,000.

18 A Yes.

19 Q So at the year-end 2004, its gross receipts were just a
20 little higher than they had been in 2002, right?

21 A Yes.

22 Q Do you have an understanding for the cause of that
23 decline in Trans-Spec's gross receipts?

24 A No.

1 Q Trans-Spec's gross profits for 2004, at least according
2 to the tax returns, is about 200,000 more than it was
3 in 2003, correct?

4 A Correct. Yes.

5 Q And that reflects the fact that its cost of goods sold
6 declined considerably more than its gross receipts,
7 right?

8 A That's correct.

9 Q Do you have an understanding for why its cost of goods
10 sold declined so much in 2004?

11 A No.

12 Q And again, Trans-Spec's total income, according to the
13 tax returns in 2004, was about was almost half a
14 million more than it was in 2003. Do you have an
15 understanding for why there was that increase in its
16 total income between 2004 and 2003?

17 A No.

18 Q But you agree with me that I've read the tax returns
19 correctly?

20 A Yes. Uh-huh.

21 Q The \$500,000 increase in 2004 included the 250 odd
22 thousand that Trans-Spec realized by selling off some
23 of its equipment, correct?

24 A That's correct.

1 4010. 4010.

2 Q We see it was still in operation in 2002, but it only
3 brought in less than \$10,000, right?

4 A Right.

5 Q Other than the retail truck repair part of the business
6 and the trucking part of the business and the truck
7 wash part of the business, does Trans-Spec have any
8 other --

9 A No.

10 Q -- business units?

11 A No. Not that I know of, no.

12 Q Do you have an understanding of the reason why
13 Trans-Spec lost such a large amount of money in 2004 to
14 have a taxable income of negative 216, almost 217,000,
15 correct?

16 A I think because they had a terrible winter
17 business-wise. That is the only thing that I know.

18 Q What do you mean they had a terrible winter
19 business-wise?

20 A They didn't have as much income generated during the
21 winter as they usually do.

22 Q The gross receipts that they had in 2004 was actually
23 more than they had in 2002. They had a -- 2002 they
24 didn't have any significant loss. Do you understand,

1 do you have an understanding for what the reason for
2 the difference between those two years is?

3 A No, I don't.

4 Q Okay. You haven't attempted to analyze the cause for
5 Trans-Spec's poor performance in 2004?

6 A I have not.

7 Q Had Trans-Spec increased its debt burden in 2004
8 substantially?

9 A Yes, it did.

10 Q And had it increased its required debt service
11 payments?

12 A Yes, it did. Yes.

13 Q By about how much had it increased its debt service
14 payments from 2003 into 2004?

15 A On the current basis, by about 200. \$205,000.

16 Q So in 2004, Trans-Spec was paying about \$205,000 more
17 to service its debt than it was in 2003?

18 A I'm not sure that is correct. What I'm saying is that
19 in as of December 31, the current debt that Trans-Spec
20 has for the current -- for the next 12 months is
21 \$205,000 more than what it would have had in 2004.

22 Q In terms of money that was paid out in the year 2004 to
23 service its debt, can you tell me how much that figure
24 exceeded, if it did exceed, what it paid in 2003?